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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

March 12, 1999

VIA HAND DELIVERY

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.,  
Washington, DC 20554

Re: Deployment of Wireline Services Offering Advanced  
Telecommunications Capability, CC Dkt. No. 98-147.

Notice of Oral Ex Parte Presentation

Dear Ms. Salas:

On Tuesday, March 9, 1999 Peter Pitsch of Intel spoke with Dr. Robert Pepper, Chief of the Office of Plans and Policy. In that discussion Pitsch addressed two issues in the FCC's advanced services proceeding: (1) whether wholesale arrangements between ILECs and ISPs should be subject to the Act's avoided cost discount for resale of telecommunications services "at retail" and (2) whether ILECs should be forced to unbundle DSLAMs.

First, Pitsch stated that subjecting the wholesale arrangements between ILECs and ISPs to such a discount would undermine those arrangements and discourage ILECs from offering ISPs the lowest possible prices. This could skew competitive developments in the larger broadband market and discourage broadband deployment.

Second, Pitsch stated that the FCC should expeditiously determine that ILECs need not unbundle DSL electronics where they are making

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essential facilities available to the CLECs. Pitsch discussed the relevance of *AT&T v. Iowa Utilities Board* to the FCC's determination of whether an ILEC must unbundle advanced services electronics under Section 251(d)(2). He stated that the FCC can and should determine that this equipment does not meet the "necessary" and "impair" test, because it is available at relatively low cost from competitive equipment suppliers as long as the CLECs have access to the other essential facilities controlled by the ILECs.

In the subsequent discussion Pepper and Pitsch discussed a variety of issues and possible courses of action. Pitsch stated that there is sufficient notice and comment to find DSLAMs need not be unbundled. Citing Section 251(d)(2), the FCC in the Section 706 NPRM (at para. 180) asked what unbundling requirements should be imposed on network elements used by ILECs in the provision of advanced services. The Comments and ex parte letters filed in that proceeding support a determination that there would be no impairment without unbundling, e.g., GTE Comments at 103-104 and Internet Access Coalition Comments at 19-21.

Pitsch stated that under any reasonable interpretation of the Supreme Court's guidance, DSLAMs do not meet the necessary and impair test of the statute. DSLAMs are available from competitive vendors at reasonable cost. There is no legacy advantage.

Pitsch noted that this conclusion assumes compliance with the FCC's collocation rules assuring CLECs effective access to ILECs' central offices. It also assumes that the CLECs have reasonable access to provisioned loops and other essential facilities. At this point the FCC is reconsidering whether its unbundling requirements for loops and other network elements should be narrowed in light of *AT&T v. Iowa Utilities Board*. The final determination of those unbundling obligations must await the resolution of that proceeding.

However, Pitsch stated that the FCC could reasonably conclude now that if in the interim an ILEC were to make a substantive showing that it is in compliance with the FCC's collocation requirements and that provisioned loops are reasonably available, that ILEC would not be obligated to unbundle DSLAMs. A substantive showing is appropriate because the FCC will be modifying its collocation rules and because substantial questions have been raised as to current state of ILEC compliance with its previous loop unbundling rules.

An ILEC should be able to make a showing for a limited geographical area such as a LATA or MSA. The substantive showing would need to demonstrate that particular COs are in compliance. Such a showing could include evidence of actual CLEC deployment or evidence of available space or other indicia that demonstrate a CO conforms with the FCC's collocation rules. Under this approach, an ILEC would know that if it were to deploy DSLAMs in a CO in compliance with the revised collocation requirements and the previous loop requirements, it would not be obligated to unbundle those DSLAMs now or in the future.

The FCC could determine that if an ILEC is found to be in material non compliance in a CO where it had stated it was in compliance , the unbundling obligation for DSLAMs would be reimposed throughout the ILEC's service territories until the ILEC had again demonstrated effective compliance.

Pitsch stated this approach would clarify the market environment and eliminate unnecessary delay and uncertainty. It would strengthen ILEC incentives to expeditiously comply with the FCC's revised collocation requirements. It would also foster quicker and wider deployment of advanced services by ILECs. Pitsch stated that these public interest benefits would be substantial and warrant expeditious action by the FCC.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's Office and a copy is being provided to the above referenced FCC personnel. Please inform me if any questions should arise in connection with this filing.

Respectfully submitted,

  
Peter K. Pitsch

cc: Robert Pepper